REMARKS

Independent claim 14 with dependent claims 16-27 remain present in the application.

Claims 14 and 16-18 remain rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. 1,707,375 (Upson) for the reasons given in the Office Action of January 27, 2003. Claims 14 and 16-18 remain rejected under 35 U.S.C. § 103 as being unpatentable over the Upson reference in view of Applicants' admitted prior art and/or *Modern Pulp and Paper Making*, by Calkin for the reasons given in the Office Action of January 27, 2003. Claims 14 and 16-27 remain rejected under 35 U.S.C. § 103 as being unpatentable over Applicants' admitted prior art in view of the Upson reference and U.S. 2,881,670 (Thomas) and/or U.S. 2,881,676 (Thomas) as necessary, and U.S. 3,929,065 (Csordas et al.) and U.S. 3,595,744 (Skoldkvist) and Calkin as further necessary for the reasons given in the Office Action of January 27, 2003. The arguments provided in Applicant's Response filed June 26, 2003 were "deemed unpersuasive of patentability" on the basis that the limitation added in such response "is a statement of intended function or method of operation and thus does not impart further positive apparatus structure.

Claim 14 was amended in the previous response to recite that the first wedge zone, formed by the first top wire and the bottom wire, is pressure loaded at the outlet end. The Applicant respectfully submits that such recitation is not "a statement of intended function or method of operation" but is in fact a further apparatus limitation on the first wedge zone. However, even if such recitation were considered a functional limitation, the Examiner is not free to dismiss consideration of such limitation out of hand.

> MPEP § 2173.01 provides that
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> A fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as the terms are not used in ways that are contrary to accepted

meanings in the art. Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought. As noted by the court in In re Swinehart, 439 F.2d 210, 160 USPQ 226 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought. (emphasis added)

MPEP § 2173.05(g) provides that

> A functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. In re Swinehart, 439 F.2d 210, 169 USPQ 226 (CCPA 1971).
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> A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. A functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step. Whether or not the functional limitation complies with 35 U.S.C. 112, second paragraph is a different issue from whether the limitation is properly supported under 35 U.S.C. 112, first paragraph or is distinguished over the prior art. (emphasis added)

In addition the CAFC has held that "[o]n occasion ... structure may be inadequate to define the invention, making it appropriate to define the invention in part by property [functional] limitations." E.I. duPont de Nemours & Co. v. Phillips Petroleum Co., 7 USPQ2d 1129, 1133 (Fed. Cir. 1988).

In view of the proceeding remarks, prompt and favorable reconsideration is respectfully requested.

Respectfully submitted,

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